

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

---

1st Report of Session 2017–19

**Social Security (Restrictions  
on Amounts for Children and  
Qualifying Young Persons)  
(Amendment) Regulations  
(Northern Ireland) 2017**

**Correspondence:  
Local government devolution orders**

Includes 9 Information Paragraphs on 17 Instruments

---

Ordered to be printed 4 July 2017 and published 6 July 2017

---

### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Lord Faulkner of Worcester	Lord Hodgson of Astley Abbots	Lord Sherbourne of Didsbury
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne ( <i>Chairman</i> )
Baroness Gould of Potternewton	Lord Kirkwood of Kirkhope	Baroness Watkins of Tavistock
Lord Haskel	Baroness O'Loan	

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# First Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

---

### Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) (Amendment) Regulations (Northern Ireland) 2017 (SR 2017/79)

*Date laid: 20 April*

*Parliamentary procedure: negative*

*Our 30th Report of the last session commented on the regulations for Great Britain which set out four exceptions to the provision that, from 6 April 2017, claimants can only receive certain benefits for two children or qualifying young persons in a household. The current instrument (SR 79/2017) is the equivalent Northern Ireland legislation. Its provisions exactly mirror the mainland Regulations, with the exception of the start date. The general concerns expressed in our 30th Report, for example, about how families in similar circumstances may be treated differently because of the order of their children, apply equally to this extension of the legislation.*

*There is an additional concern however in relation to this specific instrument, because of its interaction with section 5 of the Criminal Law Act (Northern Ireland) 1967. Where a woman makes a claim for benefits for a third child using the exception that the child was born as a result of non-consensual conception, the declaration required by SR 79 could significantly increase the likelihood of the police being drawn into the investigation of a claimant's case. A letter from Women's Aid points out that these Regulations place "the burden of navigating the tricky territory relating to section 5 obligations, and potential criminal sanction, entirely on the shoulders of designated voluntary sector organisations and healthcare professionals". Where the victim has chosen not to involve the police previously, the increased likelihood of the police becoming involved, and the possibility that she herself may become liable to prosecution under section 5 for not informing them at the time of the incident, must make it likely that some women will not claim the benefit. As a result they will lose the additional funds to which they would otherwise be entitled and the policy will therefore not operate as intended.*

### **These Regulations are drawn to the special attention of the House on the ground that they may imperfectly achieve their policy objective.**

1. These Regulations have been prepared by the Department for Communities, Northern Ireland (DfC) and laid by the Department for Work and Pensions (DWP). They are accompanied by an Explanatory Memorandum (EM). A link is provided to the guidance that has been published on the application of this policy to Income Support and Job Seekers Allowance.<sup>1</sup> DfC intend that this guidance will also apply to Universal Credit claims when the benefit is introduced in Northern Ireland in September 2017. A link is also provided to a copy of the form which has to be completed when a claim is made for a third child on the ground of non-consensual conception.<sup>2</sup> Correspondence from the Women's Aid Federation of Northern Ireland quoted below is published in full on our publications webpage.<sup>3</sup>

---

1 <https://www.nidirect.gov.uk/articles/income-support-dependants-allowance-two-child-limit>

2 <https://www.nidirect.gov.uk/publications/form-ncc1niis-support-child-conceived-without-your-consent>

3 [30th Report](#), Session 2016–17 (HL Paper 148).

*Previous regulations (GB only)*

2. From 6 April 2017, sections 13 and 14 of the Welfare Reform and Work Act 2016 restricted to two the number of children or qualifying young persons in a household for whom the Child Element in Universal Credit and equivalent benefits is payable. Our 30th Report of the last session dealt with the Regulations which set out four exceptions to the provision in Great Britain.<sup>4</sup> Our Report concluded that the first three exceptions described were straightforward and based on facts (multiple birth, adoption, kinship care) but the fourth, relating to non-consensual conception, would be much more difficult to assess and DWP did not, at that stage, appear to have made adequate arrangements for doing so. Accordingly that instrument was reported on the ground that it may imperfectly achieve its policy objective, our strongest criticism.
3. We received over 100 emails about those Regulations and eight substantive submissions raising practical issues about the legislation. One of those, from Women’s Aid, pointed out that in Northern Ireland, confidential declarations of rape or coercion to a third party assessor would be contrary to the law. In Northern Ireland it is a criminal offence subject to a prison sentence for an organisation or support service to fail to declare information about a serious offence to the police if they become aware of it. Our Report commented:

“This will put both the applicant and the assessor in an invidious position. The practicalities of applying these requirements in Northern Ireland will need to be fully thought through before the equivalent regulations are brought forward”.

*Equivalent legislation for Northern Ireland*

4. The current instrument (SR 79/2017) is the equivalent Northern Ireland legislation. Its provisions exactly mirror the mainland Regulations with the exception of the start date: the rules in respect of Income Support and Jobseeker’s Allowance came into operation on 11 May; the others will be brought into effect when Universal Credit is implemented in Northern Ireland (currently planned for September 2017).
5. In their letter of 31 May 2017, Women’s Aid question the absence of the Equality Assessment required by section 75 of the Northern Ireland Act 1998 and under the Belfast Agreement to promote equality of opportunity between persons of different religious belief, political opinion, racial group etc. DfC refers back to the work done on the original Welfare Reform Bill in Northern Ireland, stating that in 2013 the Ad Hoc Committee on Conformity with Equality Requirements concluded that it could not identify any specific breaches of equality or human rights.
6. DfC continued:
 

“ ... while a consultation was not specifically undertaken by the Department for Communities on the proposed two child policy change, it is part of the wider reforms to the welfare system which is aimed at further reforming the benefit system by focusing on supporting people to find and keep work. ...The Good Friday Agreement specifically cited

---

4 Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 (SI 2017/376), [30th Report](#), Session 2016–17, (HL Paper 148).

social security as an area where parity is normally maintained and this was reflected in the Northern Ireland Act 1998 where provision was made to ensure that the systems in the two jurisdictions could continue to work, in effect, as coherent single systems.

Under the Fresh Start agreement on 17 November 2015 it was decided that Westminster should take the powers to legislate for Welfare Reform in NI. Consequently the Northern Ireland Welfare Reform legislation corresponds to that for Great Britain.

In relation to limiting support to a maximum of two children in Universal Credit, the UK Government assessed the equality and human rights impacts of the policies fully, throughout policy development and in preparation for its implementation, thus meeting its obligations under the Public Sector Equality Duty, and ensuring compliance with Human Rights Act 1998”.

*Potential conflict with existing Northern Ireland legislation about disclosure*

7. Section 5 of the Criminal Law Act (Northern Ireland) 1967 provides that where a relevant offence has been committed, it shall be the duty of every other person who knows or believes that the offence has been committed and that has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence, to give the information to a constable, otherwise they shall be guilty of an offence.
8. Paragraph 7.20 of the EM nods to the concerns expressed in our 30th Report but is not entirely clear. It says that “an approved professional will not have to determine whether the incident actually occurred ... nobody will be required to reach a view about whether a criminal offence has actually been committed.” On request DfC provided further explanation:

“The approved third party will be asked to tick a box indicating that the claimant’s circumstances are consistent with it being likely that the non-consensual conception exception applies. The third party approver will not be asked to provide any detail on those circumstances.

The form used to claim the non-consensual conception exception and the accompanying guidance will highlight that in Northern Ireland, if the third party knows or believes that a relevant offence (such as rape) has been committed, the third party will normally have a duty to inform the police of any information that is likely to secure, or to be of material assistance in securing the apprehension, prosecution or conviction of someone for that offence.

To ensure that claimants and third parties are aware of the law in Northern Ireland, HMRC’s guidance makes this long-standing legal obligation clear, although women applying for the exception for non-consensual conception are advised that they do not have to tell the third party the name of the other parent nor is there a requirement on the third party to seek any further evidence beyond confirming that the exception should apply”.<sup>5</sup>

---

5 See link to both the form and guidance in footnotes above.

9. To qualify for this exception, the mother must not be living at the same address as the other party to that intercourse (reg 5 (1)(b)(ii)). We asked how that requirement might be satisfied if the name of the father was not disclosed. DfC replied that when applying for this exemption the claimant will be asked to confirm that they are no longer be living with the child's other biological parent. The claimant will have to tick a box to confirm this on their application. Should the claimant provide false information this would be fraud.

*Availability of third party assessors*

10. In their letter of 31 May 2017 Women's Aid point out that, although the DfC says the third party assessor does not have to ask for the name of the other party to the conception, the assessor will need to obtain sufficient evidence to confirm that the applicant's story is consistent with rape, otherwise the assessor may also risk becoming liable to prosecution by being complicit in fraud. Women's Aid state that these Regulations place "the burden of navigating the tricky territory relating to section 5 obligations, and potential criminal sanction, entirely on the shoulders of designated voluntary sector organisations and healthcare professionals".
11. Their letter states for this reason, and on moral and ethical grounds, few organisations are coming forward to act in as third party assessors. Although the DfC responded that a healthcare professional (for example, midwife, health visitor or doctor) or a registered social worker can also fulfill this role and this will ensure that any claimant has local access to an approved assessor, Women's Aid state some GPs are asking if they are contractually obliged to undertake this task.

*Potential liability of the claimant?*

12. It is our understanding that section 5 requires those involved in the process of assessing a person's claim only to report information disclosed in that process to the police, it does not impose a positive duty on anyone (the Department included) to try and obtain further information about the possible offence. Although this principle of disclosure is long-established in Northern Ireland and the bodies working as third parties will be used to operating under that constraint, Women's Aid state that these Regulations make choosing the correct path particularly tricky. What if the claimant tells the assessor she was raped by her father/employer/next-door neighbour? Although this does not provide a name it would make the perpetrator identifiable and the assessor would be bound to report that information to the police.
13. It is also our understanding that the duty imposed by section 5 applies to the victim of the crime as well as to third parties. If a woman makes a claim relying on the non-consensual conception exception, she may be putting herself into the position of having to disclose information to the police, even if she does not provide enough information to trigger that duty for the third party assessor. Simply by claiming rape or coercion the victim puts the case into the public domain, and must, therefore, be put at greater risk of being prosecuted herself under section 5 for failing to give the police information which might help secure a prosecution or conviction of a crime. Although prosecution is only pursued with the consent of the Attorney-General and is rare, the possibility will be enough to deter some claimants and some assessors.

*Conclusion*

14. The general concerns expressed in our 30th Report of last session, for example, about how families in similar circumstances may be treated differently because of the order of their children, apply equally to this extension of the legislation. That Report also queried the practicalities of how the exception for non-consensual conception would operate.
15. There is an additional concern in relation to this specific instrument, because of its interaction with section 5 of the Criminal Law Act (Northern Ireland) 1967. The complexities of operating within the law place third party assessors in an invidious position, and the declaration required by SR 79 may significantly increase the likelihood of the police being drawn into the investigation of a claimant's case. A claimant, who did not inform the police at the time of the incident, will have had her own reasons for not doing so. The fact that section 5 increases the likelihood of the police becoming involved must make it likely that some women will not claim the benefit in order to avoid that risk. As a result they will lose the additional funds to which they would otherwise be entitled and the policy will therefore not operate as intended.

## CORRESPONDENCE

---

### **Draft Greater Manchester Combined Authority (Functions and Amendment) Order 2017**

16. On 24 April of this year, the House considered the draft Greater Manchester Combined Authority (Functions and Amendment) Order 2017. In the course of that debate, speaking for the Government, Lord Bourne of Aberystwyth referred to comments which the Committee had made about the draft Order. In our view, that reference was not an accurate account of our comments. We wrote to Lord Bourne on 26 April, and received a reply from him the following day. We are publishing that correspondence at Appendix 1. We are disappointed that the reply rests on a selective and incomplete account of comments made in our reports,<sup>6</sup> and in so doing replicates the approach followed in the debate on 24 April of this year. We welcome Lord Bourne's commitment to taking care not to misrepresent our views, and we look forward to seeing this commitment strengthened and made more effective.

---

6 Notably, our [17th](#) and [31st](#) Reports (HL Papers 75 and 154) of the 2016–17 Session.

## INSTRUMENTS OF INTEREST

---

17. As is apparent from the information that we are publishing below, the calling of the General Election in June disrupted the progress of a number of statutory instruments. In some cases, Departments saw a necessity to bring the instruments into force very soon after laying them, departing from the convention of allowing 21 days between laying and bringing into force. There are also several examples of instruments which have been laid following earlier consultations, but where the Department has not yet published a summary of the consultation responses (as is required under the Cabinet Office's consultation principles). While noting the explanation which the Departments concerned have given in such cases, we make the point that these approaches are inimical to effective Parliamentary scrutiny of secondary legislation and we may wish to follow this up as and when further opportunity arises.

### Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2017 (SI 2017/536)

18. The Department for Communities and Local Government (DCLG) has laid these Regulations with an Explanatory Memorandum. The Regulations serve two purposes: to provide that capital receipts may be used to meet any liability on a Mayoral development corporation to pay corporation tax; and to amend the calculation of the amount that must be paid by a local authority to the Government out of capital receipts arising from the disposal of housing land.
19. As regards the first of these changes, in the EM DCLG says that the London Legacy Development Corporation (LLDC) was set up following the 2012 Olympics to redevelop the Olympic Park and to sell off those parts no longer used for sports for commercial and residential use, an activity which generates capital receipts; and that, because the LLDC is a limited company, it is required to pay corporation tax, which is a revenue cost. DCLG says that, as a functional body of the Greater London Authority, the LLDC is also bound by the prudential code; and that this has created a mismatch, whereby the LLDC cannot use the source of its profits to pay the associated tax liability. There is no explanation in the EM of why DCLG is tackling this issue only in 2017, given that the LLDC was set up in 2012; and queries to the Department have yielded no useful clarification of this point.
20. As regards the second change, in the EM DCLG says that consultation, primarily targeted at local housing authority finance officers, took place between 9 February and 3 March 2017 with 20 responses from local housing authorities and four from local government representative and professional bodies. DCLG has told us that publication of the Government response to this consultation has been delayed by restrictions imposed on Government publications during both local and national election campaigns, and that no date for publication has yet been scheduled. **We note that the Department brought these Regulations into force during the campaign period for the 2017 General Election; in our view, simultaneous publication of the evidence base for the changes, including a summary of consultation responses, should have been possible.**

**Road Vehicles (Registration and Licensing) (Amendment) Regulations 2017 (SI 2017/554)**

21. This instrument requires the Driver and Vehicle Licensing Agency (DVLA) to provide to another Member State the identity of the registered keeper of a vehicle registered in the UK to enable the investigation of an alleged traffic offence in that country. The Secretary of State can also request corresponding information in relation to offences committed in the UK by vehicles registered in other Member States. The legislation applies only to specified traffic offences which are drink driving, driving while under the influence of drugs, failing to stop at a red traffic light, failing to use a seat belt (or child restraint), failing to wear a safety helmet, using a mobile telephone or any other communication device while driving, speeding, and the use of a forbidden lane. The Explanatory Memorandum states that these eight offences accounted for about one third of road deaths in Great Britain in 2015. It also notes that by altering the attitudes of drivers who tend to take more risks when driving abroad in the belief that they cannot be pursued, the EU anticipate the change could save as many as 350-400 lives per year. France implemented the Directive a year ago and has evidence that since the introduction of the Directive, the overall numbers of foreign offenders breaking their traffic rules has fallen markedly.

**Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571)**

**Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572)**

**Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (SI 2017/580)**

**Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017 (SI 2017/582)**

**Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 (SI 2017/583)**

**Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017 (SI 2017/585)**

**Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 (SI 2017/588)**

**Environmental Impact Assessment (Forestry) (England and Wales) (Amendment) Regulations 2017 (SI 2017/592)**

**Environmental Impact Assessment (Agriculture) (England) (No. 2) (Amendment) Regulations 2017 (SI 2017/593)**

22. All these Regulations amend existing secondary legislation which has served to implement Environmental Impact Assessment (EIA) requirements in different policy areas. SIs 2017/571 and 572 have been laid by the Department for Communities and Local Government (DCLG); SIs 2017/580 and 582 by the Department for Business, Energy and Industrial Strategy (BEIS); and SIs 2017/583, 585, 588, 592 and 593 by the Department for Environment, Food and Rural Affairs (Defra).

23. The EIA processes stem from EU legislation, first embodied in a Council Directive from 1985 which, after several amendments, was codified by a 2011 Directive. This was in turn further amended, by a Directive which entered into force in May 2014,<sup>7</sup> and required Member States to transpose the amended provisions by 16 May 2017. The 2014 amendments to the Directive aim to simplify the rules for assessing the potential effects of projects on the environment in line with “smarter” regulation; to lighten unnecessary administrative burdens; and to improve the level of environmental protection.
24. DCLG, BEIS and Defra all carried out consultations in relation to the Regulations in the early part of 2017, as explained in the Explanatory Memoranda (EMs) laid alongside the instruments. The Departments laid the different sets of Regulations in April of this year, in order to bring them into effect by the transposition deadline of 16 May. **It is regrettable, however, that no Department has yet published a full summary of consultation responses: publication has apparently been delayed because the General Election was called as the first set of Regulations was laid. We trust that publication will be taken forward as a priority.**

#### **Prison (Amendment) Rules 2017 (SI 2017/576)**

25. This instrument inserts a new rule 46A into the Prison Rules 1999 that will provide a statutory basis for the placement into “Separation Centres” of prisoners who are assessed to pose particularly serious risks to national security, are planning terrorism or disseminating views that encourage it, or are using political, racial, religious or other views to undermine good order and discipline in a prison. The Ministry of Justice states that separating these individuals from the general prison population aims to ensure the maintenance of control and discipline within prison and to manage terrorism-related risks posed by certain prisoners. Three centres are to be set up initially with a capacity for about 12 prisoners each. Subject to risk assessment, separated prisoners will have access to a regime that is broadly comparable to those in mainstream location. The details of how such prisoners will be selected is set out in prison service guidance document.<sup>8</sup> All prisoners held in a Separation Centre will be reviewed on a quarterly basis from the date of the decision to select. The decision to retain the prisoner in the centre or to de-select them and return them to the mainstream population will be taken by the Separation Centre Management Committee. Any representations made by prisoners will be fully considered at each review. The first Separation Centre, at HMP Frankland, opened in June.

#### **Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 (SI 2017/595)**

26. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM). The Regulations transpose three EU Directives,<sup>9</sup> which harmonise detailed requirements for the production and marketing of fruit plant propagating material to provide consumer protection through assured identity, health and quality. Defra says

7 EU Directive 2014/52/EU.

8 PSI 05/2017 <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2017/psi-05-2017-separation-centre-referral-manual.pdf>

9 Directive 2014/96 on requirements for labelling, sealing and packaging of fruit plant and propagating material; Directive 2014/97 on the registration of suppliers and of varieties and the common list of varieties; and Directive 2014/98 on specific requirements for production and marketing of fruit plant and propagating material.

that these harmonised standards will guarantee UK businesses continued access to European markets while the UK remains within the EU.

27. In the EM, Defra states that the transposition date for the Directives was 1 January 2017, but that this date was missed due to a number of delays, including in releasing the consultation; and that, in response to a Commission letter of formal notice in late January, the Department committed to a revised transposition date of 1 June.
28. We asked Defra to give a fuller explanation of these delays, and of the decision to set a revised transposition deadline in June. The Department has replied as follows:

“There were a number of factors outside of our control which contributed to the delay in transposing the fruit regulations. Defra had initially planned to seek Cabinet Committee clearance to consult in April 2016, in good time to meet the EU transposition date of 1 January 2017. This, however, was delayed in the first instance by the purdah period preceding the May 2016 local elections. At the same time the Government announced that there was to be an EU referendum, at which point Cabinet Office advised Defra to hold off asking for clearance to consult from Ministers until after the referendum ended on 23 June 2016. With the UK voting to leave the European Union, write-round was further delayed whilst the department sought clarity from EU Strategy and DExEU on how to handle the transposition of EU legislation.

Cabinet Committee clearance to consult was finally received on 23 September 2016 and the consultation was published on 30 September with a closing date of 25 November 2016. The SI was eventually laid at the end of April 2017 with a coming into force date of 1 June. Further to the unavoidable delays caused by two consecutive purdah periods and the subsequent period of general uncertainty following the referendum outcome, 1 June was the earliest date we were able to transpose having completed the necessary consultation, scrutiny and parliamentary processes”.

29. The delays that have occurred over the last year in bringing these Regulations forward exemplify the impact of the local elections and referendum on the progress of normal Government business.

### **Tax Credits (Claims and Notifications) (Amendment) Regulations 2017 (SI 2017/597)**

30. HM Revenue and Customs (HMRC) has laid these Regulations with an Explanatory Memorandum (EM). In the EM, HMRC says that the purpose is to modify the backdating provisions in Regulation 7 of the Tax Credits (Claims and Notifications) Regulations 2002 (SI 2002/2014) to allow for backdating into the tax-free childcare (TFC) entitlement period where the childcare account has not been used to pay for childcare. We found the EM hard to understand, and at our request HMRC provided us with a fuller explanation of the background, which we are publishing in part at Appendix 2. **We have asked HMRC to revise the EM to incorporate this clearer explanation, and to relay it as soon as possible; and also to ensure that guidance for parents is updated and communicated without delay, given that most parents apply for 30 hours free childcare by July.**

### **Single Common Market Organisation (Emergency Aid) (England and Northern Ireland) Regulations 2017 (SI 2017/599)**

31. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM). Defra states that the Regulations provide for the payment of emergency aid to milk producers in England and Northern Ireland under the Exceptional Adjustment Aid Scheme.<sup>10</sup> The Regulations came into force on 22 May 2017. Defra says that failure to meet this date could have meant that the Rural Payments Agency (RPA) would not have been able to make payments by the European Commission deadline of 30 September 2017, and that any payments made after that date might not be reimbursed by the Commission.
32. In the EM, Defra states that, in order to ensure that EU Exceptional Adjustment Aid schemes in England could be administered within the tight timeframes set out in the Commission Delegated Regulation, a short consultation was run for a two-week period between 23 September and 7 October 2016. We asked Defra why, given that the consultation was completed in early-October, it laid these Regulations only six months later. We set out Defra's answer below:

“The consultation was short and undertaken in September/October as the Commission Delegated Regulation required the Commission to be notified of the main components of the proposed schemes by 30 November 2016. In the period following the consultation we finished developing our first two schemes (the Farming Ammonia Reduction Grant (FARG) scheme and the Farmer Risk Management Training scheme) which were launched in December 2016. The third scheme—the Small Dairy Farmers scheme—was only launched in April 2017. This staggered approach was developed to allow for reallocation of funds between the schemes and thereby maximising use of the England allocation of EU Exceptional Adjustment Aid within the EU deadline for payments of 30 September 2017. As a consequence of this approach the Regulations were laid in April 2017. It was always the intention that the Small Dairy Farmers scheme would be launched in spring 2017 to allow us to reallocate any unspent aid from the first two schemes. Other considerations were also taken into account when setting a launch date, such as timeframes for when it could be delivered by the Rural Payments Agency (RPA) in context of their routine work and other schemes they were delivering.”

### **Proscribed Organisations (Name Change) Order 2017 (SI 2017/615)**

33. Just before the Dissolution, an Order was laid with immediate effect to provide that “Hay’at Tahrir al-Sham” is to be treated as an alternative name for Al Qa’ida. Al Qa’ida is a proscribed organisation which is also recognised as operating under the names “al Nusrah Front”, “Jabhat al-Nusrah li-ahl al Sham” and “Jabhat Fatah al-Sham”.

---

<sup>10</sup> In accordance with Commission Delegated Regulation (EU) 2016/1613 of 8 September 2016 providing exceptional adjustment aid for milk producers and/or farmers in the beef and veal, pigmeat and sheepmeat and goatmeat sectors.

**Social Security (Emergency Funds) (Amendment) Regulations 2017  
(SI 2017/689)**

34. This instrument makes amendments to various regulations on benefits following the terror attacks in Manchester on 22 May 2017 and London on 22 March (Parliament and Westminster Bridge) and 3 June 2017 (London Bridge). These amendments ensure payments made by the We Love Manchester Emergency Fund and London Emergencies Trust are fully disregarded for the purpose of calculating victims' entitlement to income-related benefits and funeral expenses payments, whether they are already in receipt of those benefits or make a new claim following the incident.

## INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

---

### Instruments subject to annulment

- SI 2017/536 Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2017
- SI 2017/543 Merchant Shipping (Light Dues) (Amendment) Regulations 2017
- SI 2017/554 Road Vehicles (Registration and Licensing) (Amendment) Regulations 2017
- SI 2017/555 Care and Support (Charging and Assessment of Resources) (Amendment) Regulations 2017
- SI 2017/556 Democratic People's Republic of Korea (European Union Financial Sanctions) (Amendment) Regulations 2017
- SI 2017/560 European Union Financial Sanctions (Enhanced Penalties) Regulations 2017
- SI 2017/568 British Nationality (Maldives) Order 2017
- SI 2017/571 Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- SI 2017/572 Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- SI 2017/573 Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2017
- SI 2017/575 Police (Complaints and Misconduct) (Amendment) Regulations 2017
- SI 2017/576 Prison (Amendment) Rules 2017
- SI 2017/577 Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) (Amendment) Regulations 2017
- SI 2017/580 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017
- SI 2017/581 Employment and Support Allowance (Miscellaneous Amendments and Transitional and Savings Provision) Regulations 2017
- SI 2017/582 Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017
- SI 2017/583 Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017
- SI 2017/585 Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017
- SI 2017/588 Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017

- SI 2017/592 Environmental Impact Assessment (Forestry) (England and Wales) (Amendment) Regulations 2017
- SI 2017/593 Environmental Impact Assessment (Agriculture) (England) (No. 2) (Amendment) Regulations 2017
- SI 2017/594 Education (Postgraduate Master's Degree Loans) (Amendment) Regulations 2017
- SI 2017/595 Marketing of Fruit Plant and Propagating Material (England) Regulations 2017
- SI 2017/597 Tax Credits (Claims and Notifications) (Amendment) Regulations 2017
- SI 2017/599 Single Common Market Organisation (Emergency Aid) (England and Northern Ireland) Regulations 2017
- SI 2017/600 Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2017
- SI 2017/601 Folkestone Harbour Revision Order 2017
- SI 2017/602 Scotland Act 2016 (Consequential and Saving Provisions) Regulations 2017
- SI 2017/607 Child Benefit (General) (Amendment) Regulations 2017
- SI 2017/613 Social Security (Miscellaneous Amendments No. 3) Regulations 2017
- SI 2017/615 Proscribed Organisations (Name Change) Order 2017
- SI 2017/619 Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017
- SI 2017/620 Town and Country Planning (Compensation) (England) (Amendment) (No. 2) Regulations 2017
- SI 2017/631 Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2017
- SI 2017/632 Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2017
- SI 2017/655 Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Amendment) (England) Regulations 2017
- SI 2017/689 Social Security (Emergency Funds) (Amendment) Regulations 2017

## APPENDIX 1: LOCAL GOVERNMENT DEVOLUTION ORDERS

---

### Letter from Rt Hon. Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Lord Bourne of Aberystwyth, Parliamentary Under Secretary of State, at the Department for Local Communities and Government

#### Debate on draft Greater Manchester Combined Authority (Functions and Amendment) Order 2017

At the Committee's meeting on 25 April, we noted that this draft Order was considered in a debate in this House on 24 April.

We published information about the draft Order in our 31st Report of the current Session. The full text of our commentary on the order is as follows:

"4. We have brought a number of Orders relating to the Greater Manchester Combined Authority (GMCA) to the special attention of the House. Most recently, in our 17th Report of the current Session, we commented on the draft Greater Manchester Combined Authority (Functions and Amendment) Order 2016, noting that, while the GMCA had made efforts to seek views on the proposals for devolution of functions, the response from the public had been limited, and suggested little popular enthusiasm for the devolution process.

"5. This Order, laid by the Department for Communities and Local Government (DCLG), confers further powers on the GMCA relating to mayoral development corporations ("MDC": DCLG says that this is a first step, and that a further Order would be needed to create an MDC), grants, waste disposal authority functions, and the ability to share data. In the accompanying Explanatory Memorandum (EM), DCLG says that the GMCA has undertaken two consultations, which between them included proposals on all matters within this Order. It says that the outcomes of consultations were generally favourable, and itemises the levels of support for the different proposals now being taken forward. As we noted in our 17th Report, however, consultation responses on the proposal for the Mayor's duties showed more opposition than support, and we asked DCLG to explain why this finding was not mentioned in the latest EM. We are publishing the Department's response as Appendix 3."

We noted that, in the debate on 24 April, you said that "the Secondary Legislation Scrutiny Committee, which looked at this draft order, was content that every effort had been made in relation to consultation". As the extract from our Report quoted above shows, we did not express this opinion, and indeed we flagged up the fact that the Explanatory Memorandum laid by your Department gave an account of the consultation processes which made no mention of opposition to the proposal for the Mayor's duties.

We see it as unfortunate that the Committee's views were misrepresented in the House's debate, and we trust that you will agree that it would be appropriate if you would write to members who took part in that debate to make the position clear.

**26 April 2017**

**Response from Lord Bourne of Aberystwyth to Rt Hon. Lord Trefgarne**

Thank you for your letter of 26 April 2017. As I hope you will appreciate, I do recognise the importance of your Committee's reports, and seek to take care not to misrepresent your Committee's views.

As to my comments in Monday's debate, I am afraid I do not share your view that these misrepresent the Committee's reports. As your 31st Report recognises, Greater Manchester Combined Authority has undertaken two consultations which relate to the provisions in the Order that we were considering, and your 17th Report considered in some depth the first consultation process. That Report concluded that the "Authority [ie the Greater Manchester Combined Authority] has made considerable efforts to seek views", but that "the response from the public appears to have been very limited". In your 31st Report you refer to this conclusion and make no further comment about the efficacy of that consultation or the second consultation which was carried out in a similar manner by Greater Manchester.

Accordingly, I believe my statements in the debate were a fair description of your Committee's findings in relation to the consultations carried out by Greater Manchester. I really do not see a material difference between "considerable efforts" and "every effort"—I hope you will agree.

**27 April 2017**

## **APPENDIX 2: TAX CREDITS (CLAIMS AND NOTIFICATIONS) (AMENDMENT) REGULATIONS 2017 (SI 2017/597)**

---

### **Additional information from HM Revenue and Customs**

Tax-Free Childcare (TFC) under the Childcare Payments Act 2014 is a scheme that provides government support with the costs of necessary childcare to working families. It works through parents opening an account for an entitlement period; during that period they can pay money in, have it topped-up by government on an 80:20 ratio and spend the balance on childcare. The scheme is targeted at a broad range of parent circumstances, including those who are emerging from in-work benefits as their circumstances improve. The journey for those leaving tax credits to join TFC is that the opening of a childcare account (which follows from HMRC finding that the person's declaration of eligibility for the scheme is valid) automatically stops any current tax credits award (section 30 of CPA 14 refers). This offers a good customer journey for customers that want to transition from one to the other as they can simply apply for TFC with no preliminary steps needed ...

After the 2015 election the government introduced what is commonly known as the 30 hours free childcare scheme in England. This is covered by the Childcare Act 2016 and the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016. This scheme is being delivered through a joint application portal with TFC ...

We are aware that, if many thousands of parents use our application to apply only for 30 hours and not TFC, then some will make errors and apply for TFC by mistake resulting in an unintended termination of their tax credits. We wanted to limit any financial loss for these parents. We designed the change in question and discussed it with the Social Security Advisory Committee ... Our intention was to lay it by late April so as to be in place by the time the bulk of parents apply for 30 hours (expected to be between mid-May and early July so as to get childcare for September arranged and agreed before the summer holidays). The sudden and unexpected start of election purdah on 21 April, and the imminent prorogation of Parliament that was to follow it, caused us to bring forward the making and laying of this amendment by a few days. This ensured that Lords Commissioners of the Treasury were available to sign it and that it got laid in time for its need. We were content for the making and laying to occur just into purdah given that this was an uncontroversial matter and part of the normal "business as usual" of a government ...

The online joint application portal contains a series of warnings. If a parents makes a mistake, accidentally applies for TFC and loses tax credits they are quickly informed of the termination. They then call our call centres. Our call centre staff have guidance on handling such calls and help parents through the process of getting back into tax credits without an effective break in entitlement.

**21 June 2017**

### **APPENDIX 3: INTERESTS AND ATTENDANCE**

---

Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 4 July 2017, Members declared no interests.

#### **Attendance:**

The meeting was attended by Lord Faulkner of Worcester, Lord Goddard of Stockport, Baroness Gould of Potternewton, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury, Lord Trefgarne and Baroness Watkins of Tavistock.